

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

8:19-CR-65

vs.

JOSE MENA-VALDEZ,

Defendant.

MEMORANDUM AND ORDER

The defendant objects ([filing 41](#)) to the Magistrate Judge's findings and recommendation ([filing 40](#)) recommending that his motion to suppress ([filing 28](#)) be denied. The Court conducted a de novo review of the motion to suppress, pursuant to [28 U.S.C. § 636\(b\)\(1\)](#). The Court concurs in the Magistrate Judge's factual findings and legal analysis.

Specifically, the Court agrees with the Magistrate Judge's conclusion that the initial search of the defendant's vehicle was justified by probable cause to believe further evidence of an open container violation would be discovered. *See United States v. Neumann*, 183 F.3d 753, 756 (8th Cir. 1999). Contrary to the defendant's suggestion, *see filing 42 at 2-3*, the fact that police had already seen evidence of an open container violation strengthens, rather than weakens, the legal basis for continuing to search. *See United States v. Burton*, 599 F.3d 823, 829 (8th Cir. 2010). The Court is aware of no authority for the counterintuitive proposition that a search supported by probable cause must be discontinued *because* some evidence of a crime was found.

The Court further agrees with the Magistrate Judge's conclusion that, with probable cause to arrest the defendant for possession of methamphetamine, the subsequent search of the impounded vehicle was

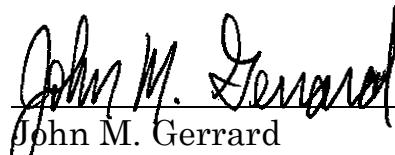
constitutionally permissible. *See United States v. Bettis*, No. 18-2407, 2020 WL 110759, at *4-5 (8th Cir. Jan. 10, 2020). The Court therefore finds the defendant's objection to be without merit, and will adopt the Magistrate Judge's findings and recommendation.

IT IS ORDERED:

1. The Magistrate Judge's findings and recommendation ([filing 40](#)) are adopted.
2. The defendant's objection ([filing 41](#)) is overruled.
3. The defendant's motion to suppress ([filing 28](#)) is denied.

Dated this 16th day of January, 2020.

BY THE COURT:



John M. Gerrard
Chief United States District Judge